IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11222 of 2002

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

JAYANTIBHAI NANALAL PRAJAPATI - Petitioner(s)

Versus

SECRETARY - Respondent(s)

==========

Appearance :
MR BS BRAHMBHATT for Petitioner(s) : 1,
MR NAGESH SOOD, AGP for Respondent(s) : 1,
==========

CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 06/10/2005

ORAL JUDGMENT

The petitioner, a Deputy Accountant in State Government, has challenged the order dated 21st October, 2002 made by the State Government. Under the impugned

order the petitioner has been ordered to be removed from service.

It appears that in disbursement of rehabilitation money with respect to the Sardar Sarovar Project certain irregularities have been committed. It has been found that a large scale irregularities involving crores of rupees has been committed. It has been alleged that in certain cases the money paid was far more than what had been recorded in the Government registers. Such money had been paid not to the original claimant but to a third party. In connection with the said fraud a disciplinary proceeding was initiated against the petitioner. It was alleged that the petitioner, being a Deputy Accountant, failed to perform his duty. After completion of the inquiry proceedings the Inquiry Officer opined that the charge levelled against the petitioner was not proved. The State Government, however, did not agree with the said finding. By notice dated 19th July, 2002 the petitioner was called upon to show-cause why he should not be held guilty of the charge levelled against him. After receiving the reply of the petitioner, by impugned order dated 21st October, 2002, the petitioner was held guilty of the charge levelled against him and was ordered

to be removed from service. Therefore, the present petition.

Mr.Brahmbhatt has submitted that the impugned order of removal from service has been made in contravention of the principles of natural justice. The finding of guilt recorded against the petitioner is not supported by evidence on record. He has submitted that in holding the petitioner guilty, the State Government has relied upon certain report made by the Chartered Accountants. The said report did not form part of the record nor was the petitioner given opportunity to meet the said report. Except that there was no other evidence on record to hold the petitioner guilty.

By the charge-sheet dated 30th September, 2000, it was alleged that the petitioner had failed to check the Government registers and Bank's statement periodically and thus had failed to notice the illegalities committed in the payment of rehabilitation money, the details of which were mentioned in the charge-sheet. The petitioner was thus alleged to have acted in contravention Rule 3.1 (1) and (2) and Rule 3.2 of the Gujarat Civil Services Conduct Rules, 1971 and Rule 8, Notes No.1&2 of the

Gujarat Financial Rules. The said charge-sheet was answered by the petitioner. He denied the allegations made against him. The State Government did not accept the reply submitted by the petitioner and ordered a detailed inquiry with respect to the said imputation of charge. After holding the inquiry the Inquiry Officer submitted his reply on 4th June, 2002. According to the Inquiry Officer imputation of charge made against the petitioner was not proved. The State Government did not agree with the said finding and gave a notice on 19th July, 2002 to the petitioner to show-cause why he should not be held guilty as aforesaid. The State Government recorded the reasons for not agreeing with the finding of the Inquiry Officer. The State Government relying upon the supplementary report of the Chartered Accountant one Amaldatt & Co. held the petitioner responsible for the alleged lapses. The petitioner replied to the said notice on 1st August, 2002. He specifically referred to the aforesaid report of the Chartered Accountant Amaldatt & Co. He did point out that such report did not form part of the record nor was the petitioner given opportunity to meet the said report. Nevertheless, the State Government made the impugned order dated 21st October, 2002 and held the petitioner guilty as alleged and ordered to remove

the petitioner from service.

There is no dispute that the aforesaid report of the Chartered Accountant Amaldatt & Co. did not form part of the record of the inquiry proceeding. Evidently, the State Government had solely relied upon the said report to hold the petitioner guilty. Thus, in recording guilt of the petitioner the State Government had relied upon the extraneous materials. The impugned order has indeed been made in violation of principles of natural justice. The impugned order, therefore, deserves to be set-aside.

In the result the petition is allowed with cost. The impugned order dated 21st October, 2002 made by the State Government (Annexure-'A' to the petition) is quashed and set-aside. By order dated 1st November, 2002 this petition was admitted to final hearing and pending the petition the implementation of the impugned order was stayed. No consequential relief is, therefore, required to be granted. Except that the petitioner shall stand reinstated in service from the date he was removed from service. It further appears that pending disciplinary proceeding the petitioner was suspended from service on 6th November, 1999. The question of regularisation of the

period of suspension from 6th November, 1999 till 21st October, 2002, the date the petitioner was removed from service, shall be considered and decided by the State Government within three months from today. The petitioner shall have liberty to challenge the order if adverse to the petitioner. Rule is made absolute in the above terms.

It is clarified that this order shall not preclude the State Government to hold the departmental proceeding afresh against the petitioner with respect to the alleged lapses committed by the petitioner, in accordance with law.

(Ms. R.M.Doshit, J.)

/moin